

(1994) 05 OHC CK 0025

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2379 of 1990

Purnachandra Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-05-1994

Acts Referred:

Orissa General Clauses Act, 1937 — Section 22

Orissa Grama Panchayat Rules, 1968 — Rule 213(2), 216

Citation : (1994) 2 OLR 48

Hon'ble Judges : G.B. Pattnaik, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : J.K. Rath, for the Appellant; Additional Government Advocate and Nilachal Panda, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Pattnaik, J.—The order of the District Panchayat Officer. Dhenkanal, dated 30th of June, 1990, annexed as Annexure-12, with- drawing the approval of the petitioner's appointment as Secretary of Tulsipal Grama Panchayat is being challenged in this, writ application, inter alia, on the ground that there is no provision conferring such power of withdrawal of an approval once accorded by the District Panchayat Officer under the provisions of the Orissa Gram Panchayat Rules.

2. The petitioner's case in nutshell is that under Rule 212 of the Orissa Grama Panchayat Rules, 1968, (hereinafter referred to as the "Rules"), the petitioner was appointed as the Secretary of Kankinali Grama Panchayat in the year-1971 and joined the said post on 2-1-1971. The aforesaid Grama Panchayat was renamed as Tulsipal Grama Panchayat under Gazatte notification dated 9-9-1974 and the petitioner continued as the Secretary of the said Grama Panchayat. Initially the, petitioner had been granted the remuneration of Rs. 45/-per month which was subsequently raised to Rs. 80/-and then to Rs. 100/- and ultimately in the scale of pay of Rs. 120-250/-by notification dated 2-4-1985. While continuing

as the Secretary of the Grama Panchayat, the petitioner was also appointed as Extra-Departmental Branch Postmaster of village Tulasipal on 16-7-1973 and for discharging his duties as Extra Departmental Branch Postmaster, he was being paid some honorarium. It is alleged that functioning of the petitioner as the Branch Postmaster did not affect in any way about the functioning of the petitioner as the Secretary of the Grama Panchayat. The continuance of the petitioner as Extra-Departmental Branch Postmaster was to the knowledge of opposite parties 2, 3 and 4 and at no point of time any objection had been raised by any of them. Opposite party No. 1 issued a circular on 23-9-1989 whereunder the Grama Panchayat would appoint Secretary of the Grama Panchayat with increased salary of Rs. 300/- per month subject to the prior approval of the concerned District Grama Panchayat Officers. In accordance with the aforesaid circular, which has been annexed as Annexure-4 to the writ petition, opposite party No. 2 requested the Sarpanchas of the Grama Panchayats to carry out the provisions of the Circular and the petitioner's Grama Panchayat passed a resolution on 1-11-1989 confirming the petitioner's appointment as permanent Secretary with remuneration of Rs. 500/- per month and this was sent to opposite party No. 2 for his approval, who by his letter dated 30th of December, 1989, approved the resolution of the Grama Panchayat and communicated the same in his letter dated 30-12-1989, annexed as Annexure-7. While the petitioner was so continuing, an Ordinance was issued whereunder the elected members of the Grama Panchayats ceased to continue to function as such and the District Panchayat Officer remained in charge of Grama Panchayats. On 15-5-1990, opposite party No. 3 called upon the petitioner to show cause as to why he should not be removed from the post of Secretary and disciplinary action should not be taken against him, since while continuing as a full time permanent Secretary of the Grama Panchayat, he has accepted the post of Extra-Departmental Branch Postmaster. The petitioner gave a reply to the aforesaid show cause notice stating therein that the Block Development Officer has no authority to call upon the petitioner to show cause. The aforesaid reply of the petitioner has been annexed as Annexure-9. The said opposite party No. 3 once again issued another letter on 30-5-1990 reiterating the earlier charge against the petitioner and the petitioner gave a reply to the same effect as it had been done under Annexure-9. The petitioner also intimated that the continuance of the petitioner as Extra Departmental Branch Postmaster is neither prohibited under the rules nor does it affect the petitioner's continuance as Secretary of the Grama Panchayat. The District Panchayat Officer (opp. party No. 2), however, issued the Impugned letter dated 30-6-1990 withdrawing the earlier approval of the petitioner's appointment as Secretary of Grama Panchayat on the ground that by allowing the petitioner to continue as Extra-Departmental Branch Postmaster, the object of appointing a full-time Secretary for the Grama Panchayat will be defeated and the J. R. Y. scheme cannot be effectively implemented. The petitioner, therefore, has approached this Court for quashing the aforesaid order of the District Panchayat Officer

3. The opposite parties have filed a counter affidavit being sworn to by the Assistant District Panchayat Officer. It has been stated in the said counter affidavit that the Government of Orissa in its Resolution dated 23-9-1969 decided for appointment of permanent Panchayat Secretary for each Grama Panchayat on a monthly salary of Rs. 500/-. In the aforesaid resolution it was indicated that the practice of appointing part-time Secretary should be abolished. When the proposal from Tulsipal Grama Panchayat was received for approval of the appointment of the petitioner as full-time Secretary of the Grama Panchayat, the District Panchayat Officer approved the same in his order dated 30-12-1989, but later on being aware of the fact that the petitioner is also continuing as an Extra-Departmental Branch Post-master, the said approval was withdrawn. It is contended in the counter affidavit that the District Panchayat Officer being the approving authority under Rule 213 of the Orissa Grama Panchayat Rules has also the power of disapproval and when he came to learn that the petitioner was not entitled to be accorded the approval for appointment to the post of full-time Secretary of the Grama Panchayat, he withdrew the approval in question.

4. The assertion of the opposite parties in their counter affidavit that the petitioner while continuing as full-time Secretary of the Grama Panchayat accepted the appointment of Extra-Departmental Branch Postmaster has not been denied by the petitioner. The only contention raised by Mr. Rath appearing for the petitioner is that the District Panchayat Officer acted without authority in withdrawing the approval granted to the petitioner earlier and that an appointment of a Secretary of Grama Panchayat can be annulled only by way of his removal under Rule 215 of the Orissa Grama Panchayat Rules and such an order of removal can be made by the Grama Panchayat itself. No such order having been passed, the impugned order under Annexure- 12 is without jurisdiction.

5. The question that arises for consideration in the present case is whether the District Panchayat Officer has any power to withdraw an order of approval already accorded to the appointment of a Secretary of Grama Panchayat. The provision for according approval is there in Rule 21,3(2) of the Orissa Grama Panchayat Rules which may be extracted herein below in extenso:

"(d) on receipt of the proposal for appointment of Secretary from Grama Panchayat if the District Panchayat Officer is satisfied that the candidate selected by the Grama Panchayat possesses the prescribed qualification and is eligible for the post of Secretary and the selection has been made in accordance with this rule and the remuneration proposed to be paid to the Secretary is reasonable, he shall approve the proposal. If the candidate selected by the Grama Panchayat is found to be disqualified for the post of Secretary or the remuneration proposed to be paid is excessive the District Panchayat Officer may direct the Grama Panchayat to select another candidate in the prescribed manner or reconsider the remuneration and re-submit the proposal."

The aforesaid provision casts a duty on the District Panchayat Officer after

receipt of the proposal for appointment of Secretary of Grama Panchayat to be satisfied that the candidate selected by the Grama Panchayat possessed the prescribed qualification and is eligible for the post of Secretary and that the selection has been made in accordance with the rule and farther that the remuneration proposed to be paid is reasonable and on being so satisfied he has the right to accord approval to the proposal. If, on the other hand, the District Panchayat Officer finds that the person selected is disqualified for the post of Secretary or that the remuneration proposed to be paid is excessive, then he can direct the Grama Panchayat to select another candidate in the prescribed manner or reconsider the remuneration and re-submit the proposal. It is only after receipt of order of approval of the District Panchayat Officer, the Grama Panchayat is entitled to appoint the Secretary of the Grama Sasan as provided in Rule 213 (e) of the Rules. Admittedly, there is no provision for withdrawing the approval granted and a Secretary of a Grama Panchayat can be removed in accordance with Rule 216 of the Rules. There has been no removal in terms of Rule 216. The point that arises for consideration is whether in the absence of any provision for withdrawing approval, has the District Panchayat Officer who is the approving authority any power to withdraw the approval once granted ? , Learned Additional Government Advocate relies upon Section 22 of the Orissa General Clauses Act and contends that Rule 213 having conferred a power on the District Panchayat Officer to approve an appointment, necessarily confers the power to withdraw the said approval if he is satisfied that the approval in question is not in accordance with law. Section 22 of the Orissa General Clauses Act provides that if by an Orissa Act, a power to make or issue notifications, orders, schemes, rules, bye laws or forms is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, schemes, rules, bye-laws or forms so made or issued. A power to accord approval, therefore, would bring within its sweep the power of withdrawal of the same particularly when the approval had been granted not being aware of the fact that in law the approval could not have been granted in terms of the Government notification. Even apart from Sec, 22 of the Orissa General Clauses Act on which the learned Addl, Government Advocate places reliance, when an authority accords approval on incorrect or insufficient data and later on the correct informations are brought to his notice, on the basis of which he comes to the conclusion that the approval could not have been granted, he has the right to withdraw the approval in question: An authority while exercising the power under a statute passes an order on certain incorrect information has the right to rectify the mistake when correct informations are brought before him. In view of the Government resolution to appoint full-time Secretary of Grama Panchayat, the petitioner could not have been continued as the Secretary of the Grama Panchayat on accepting the job of Extra-Departmental Branch Postmaster. Since the District Panchayat Officer erroneously accorded the approval not being aware of the aforesaid state of affairs, he had to withdraw the said approval once he came to know the fact that the petitioner's continuance as Extra-Departmental

Branch Postmaster disentitled him to be approved as a permanent Secretary of a Grama Panchayat. We, therefore, see no infirmity with the impugned order of disapproval under Annexure-12.

The writ application accordingly fails and is dismissed, but in the circumstances, there will be no order as to costs.

D.M. Patnaik, J.

I agree.